



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-977]

Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor

Commission Decision to Review In Part an Initial Determination Granting Complainants' Motion for Summary Determination of a Violation of Section 337; Request for Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination (“ID”) (Order No. 10) of the presiding administrative law judge (“ALJ”) granting complainants’ motion for summary determination of a violation of section 337. The Commission also requests written submissions regarding remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter

can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 22, 2015, based on a complaint filed on behalf of FeraDyne Outdoors LLC and Out RAGE LLC, both of Cartersville, Georgia. 80 *Fed. Reg.* 79612-13. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain arrowheads with deploying blades and components thereof and packaging therefor by reason of infringement of certain claims of U.S. Patent Nos. RE44,144; 6,517,454 ("the '454 patent"); 8,758,176 ("the '176 patent"); 8,986,141 ("the '141 patent"); 9,068,806 ("the '806 patent"); 7,771,298 ("the '298 patent"); D710,962; D711,489; and of U.S. Trademark Registration No. 4,812,058. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following nine respondents: Linyi Junxing Sports Equipment Co., Ltd. ("Junxing Sports") of Shandong, China; Ningbo Faith Sports Co., Ltd. ("Faith Sports"), Ningbo Forever Best Import & Export Co., Ltd. ("Forever Best"), and Ningbo Linkboy Outdoor Sports Co., Ltd. ("Linkboy Outdoor"), all of Zhejiang, China; Shenzhen Zowaysoon Trading Company Ltd. ("Zowaysoon Trading") of Shenzhen, China; Xiamen Xinhongyou Industrial Trade Co. Ltd. ("Xinhongyou Industrial") and Xiamen Zhongxinyuan Industry & Trade Ltd. ("Zhongxinyuan Industry"), both of Fujian, China; and Zhengzhou IRQ Trading Limited Company ("IRQ Trading") and Zhengzhou Paiao Trade Co., Ltd. ("Paiao Trade"), both of Henan, China. The Office of Unfair Import Investigations ("OUII") is also a party to the investigation.

On April 28, 2016, complainants filed a motion for summary determination of a violation

of section 337 pursuant to Commission Rule 210.16(c)(2) to support its request for entry of a general exclusion order with respect to all asserted intellectual property. OUII filed a response in support of the motion.

On May 10, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 6) finding the following seven respondents in default: Junxing Sports, Forever Best, Linkboy Outdoor, Zowaysoon Trading, Zhongxinyuan Industry, IRQ Trading, and Paiao Trade. On June 23, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 8) finding Xinhongyou Industrial in default. On June 28, 2016, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 9) terminating the investigation as to (1) Faith Sports based on withdrawal of the complaint as to Faith Sports; and (2) claims 2-3, 5, and 8 of the '545 patent; claims 5 and 10 of the '298 patent; claim 3 of the '176 patent; claim 8 of the '141 patent; and claim 3 of the '806 patent based on withdrawal of these patent claims against all named respondents.

The ALJ issued the subject ID on August 22, 2016, granting complainants' motion for summary determination. The ALJ found that all defaulting respondents met the importation requirement and that complainants satisfied the domestic industry requirement. *See* 19 U.S.C. § 1337(a)(1)(B), (a)(2). The ID finds that a violation of section 337 has occurred based on its finding that each of the defaulting respondents' accused products infringe one or more of the asserted claims of the patents at issue and infringe the trademark at issue as established by substantial, reliable, and probative evidence in accordance with Commission Rule 210.16(c)(2). The ID also contained the ALJ's recommended determination on remedy and bonding. The ALJ recommended issuance of a general exclusion order with respect to the asserted intellectual

property, but did not recommend issuance of cease and desist orders directed against the defaulting respondents. No petitions for review were filed.

Having examined the record of this investigation, the Commission has determined to review in part the subject ID. Specifically, the Commission has determined to review: (1) the ID's finding that complainants satisfy the economic prong of the domestic industry requirement under section 337(a)(3)(C) with respect to all asserted patents and the asserted trademark; and (2) the ID's finding that the Commission has personal jurisdiction over all defaulting respondents. The Commission also corrects typographical errors on pages 14, 18, and 24 of the subject ID. The last two sentences of the first full paragraph on page 14 are deleted (*i.e.*, beginning with "In this investigation . . ."), and the two references to claim 32 of the '144 patent on pages 18 and 24 are corrected to reference claim 38 of the '144 patent. The Commission has determined not to review the remainder of the ID. On review with respect to issue (1), the Commission has determined to take no position on the ID's finding that complainants satisfy the economic prong of the domestic industry requirement under section 337(a)(3)(C) with respect to all asserted patents and the asserted trademark. On review with respect to issue (2), the Commission has determined to modify the ID and adds the following sentence on page 8 of the ID (before the sentence beginning with "It is therefore found . . ."):

Also, there is a sufficient connection between the defaulting respondents and the United States to make it fair to require them to defend the action at the Commission. *See* Mot. at 8-11, 66-68 (citing *Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof*, Inv. No. 337-TA-486,

Comm'n Op., 2003 WL 22147635, at *12 (July 1, 2003)).

As noted above, eight respondents were found in default. Section 337(g) and Commission Rule 210.16(c) authorize the Commission to order relief against respondents found in default unless, after considering the public interest, it finds that such relief should not issue. Before the ALJ, complainants sought a general exclusion order under section 337(g)(2) and cease and desist orders directed against the defaulting respondents. Because a general exclusion order is sought, complainants are required to establish that a violation of section 337 has occurred by substantive, reliable, and probative evidence pursuant to Commission Rule 210.16(c)(2).

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994). In particular, if complainants seek a cease and desist order directed against any defaulting respondent, please brief the following issues:

- (1) Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease

and desist order is sought. If complainants also rely on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.

- (2) In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

Complainants and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the patents expire, the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on October 20, 2016. Reply submissions must be filed no later than the close of business on October 27, 2016. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-977") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, http://www.usitc.gov/secretary/fed_reg_notices/mles/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such

treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.

By order of the Commission.

Issued: October 6, 2016

Lisa R. Barton
Secretary to the Commission

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